UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANTS REFERENCE NO.5 OF 2000

Institute of Charatered
Accountants of India ..Applicant.

V/s.

Shri. M.S. Rathi,
M/s. Rathi & Chhajed, Chartered
Accountants, 5-5-23(5), Kailash
Kunj, New Osmanpura, Station
Road, Aurangabad - 431 005 ..Respondent.

Dr.V.D.Tulzapurkar, senior Advocate with Ms.Soumya Srikrishna i/b. Kanga & Co. for applicant.
None for respondent.
Mr.U.T. Yadav with S.S.Pakale for Union of India.

CORAM : R.M.LODHA AND J.P.DEVADHAR, JJ.

DATED : 12TH AUGUST, 2004.

ORAL JUDGMENT (PER J.P. DEVADHAR, J.)

. In this reference made under section 21(5) of the Chartered Accountants Act, 1949 ('Act' for short), the Council of the Institute of Chartered Accountants of India ('Council' for short) has recommended that the respondent be reprimanded for committing profession misconduct within the meaning of section 21 & 22 read with clause (7) & (8) of Part I of the Second Schedule to the Act.

2. Mr.M.S. Rathi, the respondent herein, is a chartered accountant carrying on business in the name

& style of M/s.Rathi & Chhajed.

3. On 19th May, 1992 the Joint Director of Industries, Aurangabad ('complainant' for short) had addressed a letter to the Institute of Chartered Accountants of India ('Institute' for short) stating therein as follows :-

> " M/s Rathi & Chhajed had issued the certificates for consumption of raw material and production for the year AM-86/AM-87 in respect of the following units:-
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> 1. M/s.Shashi Welding Works, Dr. Ambedkar Road, Opp. Jubilee Park, Aurangabad.
>
> 2. M/s.St.Anthony's Welding Works, Dr. Ambedkar Road, Opp. Power House, Aurangabad.
>
> 3. M/s.Shyam Industries, 31-R, MIDC Area, Chikalthana, Aurangabad.
>
> 4. M/s.Progressive Storage Systems, B-42, MIDC Industrial Area. Waluj, Aurangabad.
>
> 5. M/s.Ajanta Steel Industries Works, N-22, MIDC Paithan, Aurangabad.
>
> 6. M/s.Apurva Engineering Works, Shah Govindji Mills Compound, Jafargate, Mondha Road, Aurangabad.
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> These certificates showed the value of imported raw material as CIF value. The Respondent had issued certificates with-out seeing records since imported value of the raw material should have been shown as value of the raw material and not CIF value. As a matter of fact, the units had no record for past consumption. Based on the CIF value, production value had been worked out by the Respondent and customs duty, etc. had not

been taken into account while working out production figures. It showed that the figures were manipulated and certificates issued were not correct."

4. A copy of the said complaint was forwarded by the Institute to the M/s.Rathi & Chhajed with a request to disclose the name of the member unanswerable to the charge of misconduct. Mr.M.S. Rathi, Chartered Accountant, submitted his written statement on 1st September, 1992 denying the allegations made in the complaint. The Council after considering the complaint as well as the reply was prima facie of the opinion that the respondent was guilty of professional and/or other misconduct and accordingly, referred the case to the Disciplinary Committee under the Act for inquiry.

5. The Disciplinary Committee, after recording the evidence of the witnesses and considering the submissions made by the parties submitted its report on 12th January,1995 holding that the respondent was guilty of professional misconduct within the meaning of clauses (7) & (8) of Part I of the Second Schedule read with section 21 & 22 of the Act.

6. The Council after considering the report of the Disciplinary Committee as well as the oral submission made by the respondent decided to accept

the report of the Disciplinary Committee and accordingly recorded its finding that the respondent was guilty of profession misconduct within the meaning of clauses (7) & (8) of Part I of the Second Schedule read with section 21 & 22 of the Act. The Council has accordingly forwarded the statement of the case to this Court under section 21(5) of the Act with the recommendation that the respondent be reprimanded for his professional misconduct.

7. Dr.Tulzapurkar, learned Senior Advocate appearing on behalf of the Institute submitted that out of the six past consumption certificates issued by the respondent in several certificates the value of the imported raw materials shown is that of CIF value. He submitted that the imported goods are subjected to levy of customs duty and, therefore, without enquiring about the quantity of customs duty, the respondent ought not to have issued certificates showing only the CIF value of the imported goods. Mr.Tulzapurkar further submitted that out of the 6 units, only one unit viz. M/s. Progressive Storage Systems was the previous client of the respondent and, therefore, greater care ought to have been exercised by the respondent before issuing the certificates in respect of unknown/new units. He further submitted that the

fact that out of the 6 certificates, 5 certificates were issued within a span of 3 days, were sufficient for the Disciplinary Committee in gathering an impression that the certificates might have been issued without verification of the relevant records. For all the aforesaid reasons, Mr.Tulzapurkar submitted that the respondent be held guilty of professional misconduct and the recommendation of the Council to reprimand the respondent for his professional misconduct be accepted.

8. We have carefully considered the submission made by the learned counsel for the Institute and we have perused the records placed before us. In the present case, the charge against the respondent is that in respect of 6 units the respondent had issued certificates regarding valuation of raw materials consumed and also the valuation of the final products for the year AM-86/AM-87 without seeing the records because, the respondent had valued the raw materials only on the basis of CIF value and has not taken the customs duty element for the purpose of valuation. It is also the case of the complainant that the said units had no record for past consumption and, therefore, the figures were manipulated and certificates issued were not correct.

9. With reference to the first change, it is true that in some of the certificates the respondent has shown the cost of the raw materials at CIF value. The respondent in his reply to the charges levelled against him, has categorically stated that the units had purchased the raw materials locally and hence paying customs duty on the said raw materials did not arise at all. It is not the case of the complainant that the units in question had imported the raw materials by paying customs duty. There is no evidence on record to establish that apart from the amount shown in the certificates the units in question had paid any other amount by way of customs duty in respect of the said raw materials. Even if the raw materials locally purchased by the units, were originally imported by a third party, what is relevant for valuation is the price paid by the units on the purchase of the said raw materials. There is no evidence on record to show that the original importer was required to pay any customs duty at the time of clearance of the said raw materials. Assuming that the original importer had paid customs duty on the said raw materials, the units were not required to pay customs duty apart from the purchase price. As stated hereinabove, there is no evidence on record to show

that the units had paid any amount by way of customs duty on the said raw materials. In these circumstances, it could not be said that the certificates issued by the respondent were erroneous merely because the customs duty has not been taken into account while valuing the cost of the raw materials.

10. The fact that some of the certificates issued by the respondent show the value of raw materials as CIF, it could not be inferred that the value shown therein are wrong and the customs duty is liable to be added to the CIF value. As stated hereinabove, there is nothing on record to show that apart from the purchase price shown as CIF, any other amount was paid by the unit in respect of the said raw materials. In these circumstances, the Disciplinary Committee and the Council were not justified in holding that the certificates issued by the respondent were not correct for not taking customs duty into account while computing the value of the raw materials.

11. The second charge levelled against the respondent that the units did not maintain any books of account is also without any merit. The only witness examined before the Disciplinary Committee,

Mr.Phillips, proprietor of M/s.Progressive Storage Systems had stated in his evidence that the books of account maintained by the unit are available at Bombay. Neither the complainant nor the Disciplinary Committee have chosen to call for those books of account for scrutiny. Thus, for the lapse of the complainant or the Disciplinary Committee to scrutinise the books of account of the units, the respondent cannot be penalised and the certificates issued by the respondent cannot be said to be faulty. In these circumstances, it cannot be said that the units did not maintain books of account and consequently, no fault can be found with the certificates issued by the respondent. Similarly, in the absence of any material to establish that the figures contained in the certificates are not correct, it will not be proper to doubt the veracity of the certificates merely because in case of 5 units the certificates were issued within a span of 3 days.

12. For all the aforesaid reasons, we are of the opinion that the charges levelled against the respondent cannot be said to be proved and consequently the findings given by the Disciplinary Committee and concurred by the Council that the 76respondent is guilty of professional misconduct

cannot be sustained.

13. In the result, the reference filed by the Council is hereby dismissed.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)